Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

OCA/Leg. Chron File: S. Africa

22 June 1988
OCA 2093-88

MEMORANDUM FOR: Chief, Africa Division/DO
Chief, Legislation Division/EPS/DO
Associate General Counsel for the DO
Chief, Africa & Latin America Division/DI

FROM: [redacted] Legislation Division STAT
Office of Congressional Affairs

SUBJECT: Report on South Africa Sanctions Bill, H.R. 1580

1. Attached for your information is a copy of relevant portions of the report on the South Africa sanctions bill, H.R. 1580. Included are sections dealing with intelligence cooperation with the government of South Africa as explained by both the Foreign Affairs and Intelligence Committees. I wish to point out in particular a section of the Intelligence Committee report which reads as follows:

[redacted] STAT

HPSCI Report at 3 (emphasis added). The Armed Services Committee expects to publish its report later this week or early next week.

2. If you have any questions, please telephone me on STAT

[redacted] STAT

[redacted]

Attachment

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

22 June 1988
OCA 2093-88

SUBJECT: Report on South Africa Sanctions Bill, H.R. 1580

OCA/LEG [redacted] (21 June 1988) STAT

Distribution:
Original - Addressees
1 - D/OCA
1 - DDL/OCA
1 - DD/HA/OCA
1 - OCA Registry
1 - OCA/Leg/Subject File: South Africa
1 - [redacted] Signer STAT
1 - OCA Read

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

100TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 100-642
Part 1

THE ANTI-APARTHEID ACT AMENDMENTS OF 1988

REPORT

OF THE

COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

[Including cost estimate of the Congressional Budget Office]

ON

H.R. 1580

together with

MINORITY, DISSENTING, AND ADDITIONAL VIEWS

MAY 20, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
19-006 WASHINGTON : 1988

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

—The South African Council of Churches (the largest religious organization in South Africa);
—Archbishop Desmond Tutu; and
—Reverend Alan Boesak.

These leading individuals and organizations agree that the costs of comprehensive economic sanctions would be far less than the costs—in terms not only of economic hardship but also of loss of lives—of failing to effectively pressure the South African Government for an end to apartheid and the avoidance of a tragic bloodbath. Regional leaders, including most recently the Presidents of Zambia and Mozambique and the Foreign Minister of Botswana, also favor comprehensive sanctions.

Specific Impact of Provisions

The proposed sanctions will impose economic costs on the South African Government in addition to serving as a catalyst for new Western economic restrictions and signaling a diminution of outside political support for the Government.

The ban on making or holding of any investment in South Africa will cut off the small amount of new direct and indirect U.S. investment (including short-term and rescheduled loans) that have continued under exemptions pursuant to the Comprehensive Anti-Apartheid Act. It will also deprive South Africa of important technological and managerial assistance flowing from the U.S. corporate presence, and act as a depressant on South African business confidence and its own willingness to invest. Furthermore, the prohibition will be a major symbol to South African blacks and whites of U.S. disassociation from apartheid. Currently, U.S. companies provide the South African Government with approximately $200 million annually in corporate taxes alone (15 times estimated expenditures of these companies on black advancement). U.S. direct investment in South Africa was $1.4 billion in 1986; U.S. indirect investment, mainly holdings in South Africa gold mining companies, was estimated at $2.5–3 billion in 1986. U.S. bank loans were $2.95 billion as of September 1987.

The new comprehensive trade ban will end virtually all U.S. exports to South Africa ($1.25 billion in 1987) except for agricultural products ($55 million in 1987). These exports mainly consist of computer and electronics products, other capital goods, chemicals, and aircraft. They contribute to South Africa's industrial and military strength. There will be a lesser impact on imports ($1.25 billion in 1987) because these are already heavily sanctioned by the Comprehensive Anti-Apartheid Act and about 80 percent of the remaining imports are anticipated to be exempted in the immediate future as strategic minerals. Previous selective bans on South African imports and exports have not been fully effective, partly due to administrative problems in enforcing restrictions against limited sectors of a country dedicated to "sanctions busting". For example, the current selective ban on computers going to the security forces is impossible to enforce fully considering the Government arms parastatal's 930 contractors and subcontractors and opportunities for access to "time sharing" on nonmilitary computers by the security forces.

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

While any economic sanctions and significant foreign policy actions impose certain economic costs on U.S. companies, it is not anticipated that these measures will result in any noticeable decline in the overall U.S. economy. South Africa makes up only 0.4 percent of U.S. direct investment abroad, 0.3 percent of imports, and 0.5 percent of exports. There has been little domestic economic effect of the approximately 50 percent reduction in direct investment and trade since 1984.

The ban on new Federal, coal, gas, and oil leases for the U.S.subsidiaries or U.S. affiliates under common control of a foreign company which directly, or through subsidiaries or affiliates, invest in or export oil to South Africa's oil industry will increase the incentive of non-U.S. oil firms to leave South Africa along with their American colleagues. Currently, the U.S. subsidiaries or affiliates under common control of two major non-U.S. firms in the South African oil industry hold 2,297 U.S. oil, gas, and coal leases. They are also active in seeking new leases during 1986 and 1987.

The ban on U.S. ships' transporting oil to South Africa eliminates a loophole in current U.S. oil sanctions. In the past, there have been reports of American ships' involvement in the clandestine oil trade which supplies South Africa with two-thirds of its oil.

The ban on intelligence and military cooperation will prohibit intelligence sharing relationships that could imply to the South African Government and people qualifications of our opposition to apartheid, regional aggression, and possible state terrorism. (Under the Comprehensive Anti-Apartheid Act and the Intelligence Authorization Act of 1987, military and intelligence cooperation are banned except "to facilitate the collection of necessary intelligence".)

The Iran-Contra hearings disclosed a number of intelligence contacts between the United States and South Africa in 1984 regarding South African aid for the Nicaraguan Contras. According to available information this would have been in exchange for certain benefits. According to press reports, the United States provided South Africa with political and military intelligence about the banned and exiled African National Congress during the 1980's in exchange for information on Soviet and Cuban activities in the region. The proposed total prohibition would have a significant, adverse political impact on the South African Government and would also avoid potential negative reactions to the United States from black leaders in South and Southern Africa. These political gains would outweigh any possible losses to U.S. intelligence or military interests, which could be minimized, as they are elsewhere, by resorting to other intelligence sources. The policy expression in favor of ending the exchange of defense attaches with South Africa supports further disassociation of the United States from South Africa's militaristic policies, and would bring our country into line with the policy adopted by the European Community in 1985.

The provisions mandating that the President: confer with other industrialized nations to reach cooperative sanctions agreements, cast U.S. votes in the U.N. Security Council for similar sanctions, and retaliate with import or government contracting sanctions against foreign businesses that take significant commercial advantage of U.S. and comparable sanctions, are designed to enhance the

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

ricans to notify employees and employee organizations of the termination of investment not less than 90 days prior to such termination. Such entities shall enter into good faith negotiations with representative trade unions, or worker organizations if there are no such unions, regarding the terms of termination. The subsection sets forth a representative list of topics to be included in such negotiations. During negotiation on the terms of termination particular attention is to be given to negotiations with organizations representing those disadvantaged by the system of apartheid.

Section 3—Prohibition regarding involvement in the South African energy sector

This section adds a new section 304 to the Comprehensive Anti-Apartheid Act of 1986 to prohibit involvement by a U.S. person in the South African energy sector. New subsection 304(a) states that a U.S. person may not provide transport to South Africa of crude oil or refined petroleum products. The prohibition includes transport on a vessel of U.S. registry or on a vessel owned by a U.S. person. New subsection 304(b)(1) states that the Secretary of the Interior may not issue any mineral lease to any national of the United States which is controlled by, or under common control with, any foreign person who purchases, acquires, owns, or holds any investment in South Africa; or who exports crude oil or refined petroleum products to South Africa. The term "may not issue any lease" refers to new leases and does not include existing or renewed leases. Subsection 304(b)(2) states that prior to issuing a lease, the Secretary of the Interior shall require the applicant for a lease to certify that the applicant is not subject to the provisions of subsection 304(b)(1).

Section 4—Prohibition on nuclear assistance to South Africa

Section 4 amends section 307 of the Comprehensive Anti-Apartheid Act of 1986, which prohibits nuclear trade with South Africa, to reflect the fact that all nuclear exports to South Africa would be banned under the trade embargo provisions in the bill. The amended section 307 retains, however, the existing prohibition on the Secretary of Energy authorizing persons to produce special nuclear material in South Africa. The amendment eliminates the waiver of the nuclear trade ban for South Africa's adherence to the Nuclear Non-Proliferation Treaty or adoption of full scope International Atomic Energy Agency safeguards as being inconsistent with comprehensive sanctions. The amendment also eliminates the exception for nuclear assistance for humanitarian reasons to protect public health and safety as also being inconsistent with comprehensive sanctions.

Section 5—Prohibition on U.S. intelligence and military cooperation with South Africa

This section repeals section 322 of the Comprehensive Anti-Apartheid Act of 1986 which prohibits cooperation with the armed forces of South Africa except for activities designed to facilitate the collection of necessary intelligence. It adds a new section 309 mandating a broader prohibition on intelligence and military cooperation.

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

New subsection 309(a)(1) provides that no U.S. agency or entity involved in intelligence activities may engage in any cooperation with the Government of South Africa.

New subsection 309(b) provides that no U.S. agency or entity of the United States may engage in any cooperation with the armed forces of South Africa.

In light of important U.S. foreign policy interest, it is intended to prohibit all forms of intelligence-sharing between the United States and South African governments, including any joint activities that contribute directly and substantially to such sharing.

New subsection 309(c) provides that no funds made available by the Congress may be obligated or expended for any expense related to cooperation prohibited by this section.

New subsection 309(d) provides that the President should not assign members of the U.S. armed forces to serve as defense or military attaches in South Africa or accredit any individual to serve as a military attache at a South African diplomatic mission in the United States. The policy expressions in this subsection are consistent with the prohibition on intelligence and military cooperation.

Section 6—Multilateral measures to undermine apartheid

This section amends title IV of the Comprehensive Anti-Apartheid Act of 1986 which is concerned with multilateral measures to undermine apartheid. The title, as amended, retains the policy statement in section 401(a) that it is U.S. policy to seek international agreements to bring about the dismantling of apartheid.

Subsection 6(a)(1) amends section 401(b)(1) to make mandatory the language in current law which encourages the President to seek such international agreements and to provide the President with flexibility in this regard. Testimony was received by the committee from executive branch witnesses that little effort had been expended in negotiating such agreements since current law is not mandatory. Strengthening of this provision will better achieve the objectives of the Comprehensive Anti-Apartheid Act.

Subsection 6(a)(2) is a technical amendment conforming current law to the provisions of this bill.

Subsection 6(b) amends section 401(e) of the Comprehensive Anti-Apartheid Act to make mandatory the language in current law which encourages the President to seek U.N. Security Council adoption of sanctions against South Africa of the same type as imposed by U.S. law. Because current law is not mandatory, the executive branch has not supported such sanctions in the United Nations.

Subsection 6(c) amends section 402 of the Comprehensive Anti-Apartheid Act to make both mandatory and more precise language which authorizes the President to economically retaliate against foreign companies taking significant commercial advantage of U.S. sanctions and comparable sanctions of other industrialized democracies. Despite authorization in current law to retaliate against those taking advantage of current U.S. sanctions the executive branch has taken no action to confront entities taking such advantage. Under the bill, the President shall impose a penalty or persons taking significant commercial advantage of U.S. sanctions or

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

100TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 100-642
Part 2

ANTI-APARTHEID ACT AMENDMENTS OF 1988

JUNE 15, 1988.—Ordered to be printed

Mr. STOKES, from the Permanent Select Committee on Intelligence, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 1580 which on March 12, 1987, was referred jointly to the Committee on Foreign Affairs, the Committee on Ways and Means, the Committee on Armed Services, the Committee on Banking, Finance and Urban Affairs, the Committee on Public Works and Transportation, and the Permanent Select Committee on Intelligence]

The Permanent Select Committee on Intelligence, to whom was referred the bill (H.R. 1580) to prohibit investments in, and certain other activities with respect to, South Africa, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

On page 4, after line 24, add the following:

> (c) The prohibitions of this section shall not apply to the conduct of diplomatic activities or to intelligence information concerning the military activities or equipment in southern Africa of Cuban military forces or of another communist country acting in concert with Cuban military forces.

On page 13, after line 7, add the following:

> (d) Section 107 of the Intelligence Authorization Act for Fiscal Year 1987 (Public Law 99-569) is hereby repealed.

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

PURPOSE

H.R. 1580 would repeal the Comprehensive Anti-Apartheid Act of 1986 (Public Law 99-440) and impose a total ban on investment in, as well as a trade embargo against, South Africa. The bill would also prohibit any United States military or intelligence cooperation with the government of South Africa.

COMMITTEE CONSIDERATION

The Permanent Select Committee on Intelligence considered only that section (section 6) of the bill dealing with military or intelligence cooperation with the government of South Africa. The Subcommittee on Legislation held two executive session hearings on H.R. 1580 on May 19, and May 24, 1988. Witnesses appearing before the Committee included William H. Webster, Director of Central Intelligence, Charles Freeman, Deputy Assistant Secretary of State for African Affairs, Donald H. McHenry, former United States Ambassador to the United Nations, Representative Ronald V. Dellums, the sponsor of the legislation, and Representative William H. Gray, III, sponsor of a similar bill, H.R. 2443.

During these hearings, the Committee explored the possible impact of a total prohibition on intelligence sharing with the Government of South Africa, as well as the United States experience under current law restricting United States intelligence relationships with that country, specifically, section 332 of the Comprehensive Anti-Apartheid Act and section 107 of the Intelligence Authorization Act for Fiscal Year 1987. Both prohibit "any form of cooperation, direct or indirect, with the Government of South Africa" in the realm of intelligence except for activities which are "reasonably designed to facilitate the collection of necessary intelligence." Taken together, they make it the policy of the United States not to provide information to the Government of South Africa pertaining to a "South African internal opposition group, movement, organization or individual" and require that any change in this policy, the provision of intelligence information contrary to that policy, or any activity undertaken to collect intelligence through intelligence sharing must be the subject of prior notification to the intelligence committees of the House and Senate.

Committee review of the implementation of these laws has been regular and thorough. The Committee has conducted periodic briefings and hearings and exchanged correspondence with intelligence officials to ensure a very thorough knowledge of the nature of United States intelligence activities in southern Africa. Based on these reviews and on the hearings which it conducted on H.R. 1580, the Committee met on June 9, 1988 and by a vote of 10 to 5 adopted an amendment to H.R. 1580.

PURPOSE OF THE AMENDMENT

The purpose of the amendment adopted by the Committee was to remove to the fullest extent possible the appearance of cooperative and friendly relations with the Government of South Africa in the intelligence field. This is of critical importance in the context of a strong United States anti-apartheid policy because the intelligence

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

services of the Government of South Africa are deeply involved in activities to maintain the iron grip of the white minority over the black majority population of South Africa inside that country and in launching paramilitary raids into neighboring countries to assassinate South African opposition members.

The amendment does make one exception to a total prohibition on intelligence sharing with South Africa. It permits the exchange of information concerning Cuban, Soviet and Angolan military forces and equipment in Angola. This is to ensure that, for the time at least, the United States may continue to follow military developments in that country in support of U.S. policy. The amendment is intended to permit intelligence activities under the current conditions and limitations.

The Committee weighed carefully in the balance the disadvantages that self-imposed restrictions on intelligence collection in this important region might have on the national security of the United States. The Committee determined that the possible harm to national security interests as a result of the adoption of H.R. 1580 was largely speculative, particularly in light of the Committee's decision to continue to permit the exchange of information concerning the military conflict in Angola.

The Committee will continue to review the possible impact of H.R. 1580, as amended, after it is enacted. However, the Committee's present judgment is that no critical element of national security information will be lost as a result of the adoption of the Committee's amendment.

Section-by-Section Analysis

Section 6(a) of the bill prohibits any agency or entity of the United States from engaging in "any form of cooperation, direct or indirect, with the armed forces of the Government of South Africa." Cooperation, in this conext, means the sharing of information or the conduct of joint operations.

Section 6(b) provides that no agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa. The word "cooperation," in this context, has the same meaning as above.

The Committee amendment would add a new subsection (c) that would exempt from the prohibitions of subsections (a) and (b) "the conduct of diplomatic activities" or "intelligence information concerning the military activities or equipment in southern Africa of Cuban military forces or of another communist country acting in concert with Cuban military forces."

The reference to diplomatic activities is necessitated by the nature of the prohibition in subsection 6(b), which covers agencies or entities of the United States "involved in intelligence activities." The Department of State's Bureau of Intelligence and Research is a part of the United States intelligence community and engages in intelligence analysis and coordination. Therefore, the Department of State is an agency involved in intelligence activities. The first exemption in subsection (c) makes clear that the application of sub-

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

section 6(b) is not intended to limit the conduct of the diplomatic activities of the United States.

The reference to intelligence information concerning military activities or equipment in southern Africa of Cuban military forces or of another communist country acting in concert with Cuban military forces refers to information about the military conflict in Angola, which is the only country in southern Africa where Cuban troops are deployed. It would permit the exchange of information concerning the military forces, capabilities, and equipment of Cuban, Soviet and Angolan military forces in Angola.

The term "Cuban military forces" used in the subsection refers to actual military combat units.

The Committee amendment would also add a new subsection 12(d) that would repeal section 107 of the Intelligence Authorization Act for Fiscal Year 1987. Section 12(a) repeals the Comprehensive Anti-Apartheid Act but does not affect section 107. The Committee believes that all previous provisions of law concerning intelligence activities in southern Africa should be repealed so as to remove any ambiguity about United States policy in this area.

Committee Position

On June 9, 1988, the Permanent Select Committee on Intelligence, a quorum being present, approved the bill by a vote of 10–5 and ordered it favorably reported.

Oversight Findings

With respect to clause 2(l)(3)(A) of rule XI of the House of Representatives, the Committee has held comprehensive hearings and briefings regarding the nature and conduct of the intelligence activities of the U.S. Government affected by this legislation. This review is outlined under the section of this report describing the Committee's consideration of the bill.

Fiscal Year Cost Projections

With respect to clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this legislation does not provide new budget authority or tax expenditures.

Congressional Budget Office Estimate

With respect to clause 2(l)(3)(C) of rule XI of the House of Representatives, the Committee has received no report from the Congressional Budget Office.

Recommendations of the Committee on Government Operations

With respect to clause 2(l)(3)(D) of rule XI of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to the subject of this bill.

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9

DISSENTING VIEWS OF CONGRESSMEN HYDE, CHENEY, LIVINGSTON, McEWEN, LUNGREN AND SHUSTER

After extensive debate and thoughtful consideration, we must dissent from the majority views and oppose the Committee's action on H.R. 1580 as inconsistent with the testimony provided to this Committee during four subcommittee hearings and briefings, countless staff discussions, and during the markup itself. This Committee heard from respected witnesses who argued forcefully for the prohibition on United States military or intelligence cooperation with the Government of South Africa. Unfortunately, these gentlemen did not have the benefit of hearing compelling testimony from senior officials of the Department of State, the Central Intelligence Agency, and the Defense Intelligence Agency concerning the immediate, negative impact that passage of this legislation would have on the U.S. foreign policy interests in the region and important intelligence community equities.

We are mindful of the concerns vioced by the majority and deplore the racist, apartheid system practiced in South Africa. Nonetheless, we have an important duty to insure that critical information necessary to protect American lives reaches interested agencies in the U.S. Government. We heard much about how cooperation with South Africa should be diminished wherever possible to send a strong signal to Botha. We agree in principle, but not at the price of hurting important national security interests of the United States and other allied and friendly countries as well. We acknowledge that the majority tried to address some of our concerns in an amendment which it adopted, but this amendment does not go far enough and in essence is only a stopgap measure necessary to mollify the membership.

Finally, we object to the majority view because once again this Congress is trying to constrain the Chief Executive's hand in foreign affairs, an area that is reserved principally to him under the Constitution of the United States. In addition, it is the President who is the Commander-in-Chief of our armed forces. Yet, the majority would deny him the intelligence he needs to discharge effectively these constitutional responsibilities.

Declassified in Part - Sanitized Copy Approved for Release 2013/09/09 : CIA-RDP89T00234R000200310021-9